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7                   UNITED STATES DISTRICT COURT  
8                   WESTERN DISTRICT OF WASHINGTON  
9                   AT TACOMA

10                   SHERI SWEENEY, QUI TAM PLAINTIFF,  
11                   for and on behalf of the United States of  
12                   America,

13                                 Plaintiff,

14                                 v.

15                   MANORCARE HEALTH SERVICES, INC., a  
16                   Delaware Corporation; STACEY MESAROS;  
17                   “JOHN DOE(S)” 1 through 50; and “JOHN  
18                   DOE, INC.(S)” 1 through 5,

19                                 Defendants.

20                                 Case No. C03-5320RJB

21                                 ORDER DISMISSING ALL  
22                                 CLAIMS AGAINST  
23                                 DEFENDANT STACEY  
24                                 MESAROS AND DISMISSING  
25                                 STACEY MESAROS WITH  
26                                 PREJUDICE

27                   This matter comes before the Court on Defendant Mesaros’s Motion to Clarify or Reconsider  
28                   Order Denying Partial Summary Judgment on FCA Retaliation Claim - Individual Liability, Dkt. 162-1,  
1                   Defendant Mesaros’s Motion for Judgment on the Pleadings for Lack of Supervisory Liability for  
2                   Wrongful Termination Claim, Dkt. 167-1, and Plaintiff’s Motion and Declaration for Voluntary Dismissal  
3                   of Defendant, Stacey Mesaros, Dkt. 169-1. The Court has reviewed all documents filed in regard to these  
4                   motions and the record herein.

5                                 FACTUAL BACKGROUND

6                   Plaintiff first filed a complaint against ManorCare Health Services, Inc. (“ManorCare”) on June 9,  
7                   2003, asserting claims under the False Claims Act (“FCA”). Dkt. 1. The United States declined to intervene.  
8                   This complaint did not include Stacey Mesaros as an individually named defendant. On August 19, 2004,  
9                   Plaintiff filed her First Amended Complaint against ManorCare. Dkt. 14. ManorCare moved for dismissal of

10                                 ORDER DISMISSING ALL CLAIMS AGAINST DEFENDANT STACEY MESAROS AND DISMISSING STACEY  
11                                 MESAROS WITH PREJUDICE

1 the First Amended Complaint on September 9, 2004, pursuant to Fed. R. Civ. P. 12(b)(6) and 9(b). On  
 2 October 21, 2004, this Court granted ManorCare's motion in part, denied it in part, and permitted Plaintiff to  
 3 again amend her complaint. Dkt. 18.

4 Plaintiff filed her Second Amended Complaint on November 22, 2004, and this complaint for the first  
 5 time included claims against Stacey Mesaros personally and individually. Dkt. 19. This complaint included  
 6 claims for various FCA injuries, wrongful termination in violation of public policy under Washington law, and  
 7 slander/defamation. *See Id.* On March 4, 2005, ManorCare and Stacey Mesaros moved to dismiss the FCA  
 8 "Quality of Care", "Worthless Services", and conspiracy claims under Rule 12(b)(6), and the Court dismissed  
 9 these claims with prejudice and denied Plaintiff's motion to again amend her complaint. *See* Dkt. 28.

10 Plaintiff again moved to amend her complaint on January 6, 2006, arguing she should be allowed to  
 11 proceed on her FCA "Quality of Care" and "Worthless Services" theories. Dkt. 69. The Court denied this  
 12 motion. Dkt. 119. In response to Defendants' motions for summary judgment, Dkts. 111, 116, 117, and 138,  
 13 the Court dismissed Plaintiff's Defamation/Slander claim, and allowed her to proceed on her FCA retaliation  
 14 claim and wrongful termination in violation of public policy claim.

15 On April 13, 2006, Defendant Stacey Mesaros moved for an order clarifying or reconsidering her  
 16 individual liability on Plaintiff's FCA retaliation claim, Dkt. 162-1, and for judgment on the pleadings for lack  
 17 of supervisory liability for wrongful termination as against her personally and not as against ManorCare, Dkt.  
 18 167-1. On April 26, 2006, Plaintiff moved to dismiss Defendant Stacey Mesaros without prejudice, Dkt. 169-  
 19 1. Defendants responded to this motion on May 2, 2006, arguing that the dismissal should be with prejudice.  
 20 Dkt. 183. Plaintiff has not opposed on the merits Defendant Stacey Mesaros's motions to dismiss the claims  
 21 as against her, and has not replied to Defendants' response on the subject of prejudice.

## 22                   LEGAL STANDARD

23        "If a party fails to file papers in opposition to a motion, such failure may be considered by the court  
 24 as an admission that the motion has merit." CR 7(b)(2).

## 25                   DISCUSSION

26        As noted, Plaintiff has not responded to Defendant Stacey Mesaros's motions to dismiss the claims as  
 27 against her. Additionally, Plaintiff has not replied to Defendants' argument that the Court should dismiss all  
 28 claims against Stacey Mesaros with prejudice. Review of these motions shows that the only matter at issue

1 between the parties is whether to dismiss Stacey Mesaros with or without prejudice. Given Plaintiff's lack of  
2 a response on the merits to Defendants' motions to dismiss Stacey Mesaros, the Court finds that dismissal with  
3 prejudice is appropriate.

4 In addition to the procedural justification for a dismissal with prejudice, it is clear that no claim should  
5 proceed against Stacey Mesaros at this stage. Two years after filing this action, and three years after the events  
6 in question, Plaintiff has neither corrected her error in lodging barred claims, nor has she identified additional  
7 bases for liability as against Stacey Mesaros. The Court finds therefore that it is appropriate to dismiss  
8 Defendant Stacey Mesaros from this action, and all claims against her, with prejudice.

9 CONCLUSION

10 For the foregoing reasons, Defendant Mesaros's Motion to Clarify or Reconsider Order Denying Partial  
11 Summary Judgment on FCA Retaliation Claim - Individual Liability, Dkt. 162-1, is GRANTED. Defendant  
12 Mesaros's Motion for Judgment on the Pleadings for Lack of Supervisory Liability for Wrongful Termination,  
13 Dkt. 167-1, is GRANTED. Plaintiff's Motion and Declaration for Voluntary Dismissal of Defendant, Stacey  
14 Mesaros, Dkt. 169-1, is GRANTED IN PART. The Court hereby ORDERS that Defendant Stacey Mesaros  
15 be DISMISSED from this action with prejudice. It is further ORDERED that the caption shall be changed to  
16 reflect only the names of the current parties, Sheri Sweeney and ManorCare Health Services, Inc. The Clerk  
17 is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se*  
18 at said party's last known address.

19 DATED this 8<sup>th</sup> day of May, 2006.

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22 Robert J. Bryan  
23 United States District Judge  
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